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July 29, 2022

Smith et al. v. Annucci et al.
1:21-cv-01715-RA [rel. 1:17-cv-07954-RA-OTW]

Dear Judge Wang:

We submit this joint status letter in accordance with the Court's June 15, 2022 Order to provide the status of the parties' ongoing discovery disputes. The parties met and conferred to discuss these issues on July 13, 2022 and have been communicating by email on these issues.

General Discovery Progress and Status. Defendants served responses and objections to Plaintiffs' First Set of Document Requests on July 1, 2022. However, Defendants have not completed production of documents responsive to Plaintiffs' first set of document requests. Therefore, as discussed during the June 15, 2022 status conference, the parties plan to file a joint motion to extend the deadlines in the Joint Case Management Plan (ECF No. 137) for completing depositions, interrogatories, requests for admissions and fact discovery.

In addition, Defendants served their first set of document requests on Plaintiffs on July 26, 2022. The parties will meet and confer in the coming weeks to address Defendants' responses and objections to Plaintiffs' requests. The parties will also meet and confer regarding Plaintiffs' responses and objections to Defendants' requests after they are served.

Floor Plans. As addressed at the June 15 status conference, Plaintiffs requested floor plans for the vicinities of Plaintiffs' assaults, in part to determine whether there were cameras in those locations that would have recorded potentially relevant activity. Plaintiffs also sought such floor plans to determine whether there were areas where the sexual assaults could have occurred outside of the view of others or cameras. Defendants objected to producing floor plans because of the security risk. Defendants

have agreed to investigate where the nearest cameras were to the areas identified in Plaintiffs' discovery requests.

On July 19, 2022, Plaintiffs served a Request for Inspection of Bedford Hills Correctional Facility in order to examine the locations of the sexual assaults and cameras in those locations. Defendants have indicated while they do not object to the site inspection generally, Plaintiffs' request is undergoing a security review as Plaintiffs' have requested permission to photograph and videotape certain areas within the facility.

Investigative Records Related to Sexual Assaults at Bedford Hills Correctional Facility (“BHCF”). Plaintiffs requested all documents concerning allegations of, investigations into, determinations of, responses to and resolutions of allegations of staff-on-inmate sexual misconduct at BHCF. Defendants informed Plaintiffs that there are 135 such complaints. On June 23, 2022, Defendants informed Plaintiffs that 26 of these complaints (in addition to Plaintiffs' complaints) were made against the Officer Defendants. Of these, nine were made against Sergeant B, the Defendant accused of assaulting both Plaintiffs. Plaintiffs' position is that Defendants should be required to produce the closing investigative memoranda from the OSI files for these complaints, so that Plaintiffs can determine whether the remainder of the investigative files should be produced without waiving Plaintiffs' broader request for the full investigative files. On July 13, 2022, Defendants agreed to speak to DOCCS to determine what they would agree to produce. Defendants have not provided any further update.

Investigative Records Related to Plaintiffs' Sexual Assaults. On June 30, 2022, Plaintiffs sent Defendants a list of 67 redactions to pages or page ranges in the investigative records for which Plaintiffs requested a privilege log. On July 15, 2022, Defendants produced un-redacted versions of most of these pages. Defendants also provided a privilege log for most of the remaining pages. The parties will continue to confer regarding the remaining redactions at issue.

Job Application and Personnel Files. Plaintiffs requested the personnel files for the Officer Defendants, which included, among other things, job application materials, salary information, disciplinary and criminal histories and background check records. Plaintiffs' position is that personnel records should be produced in full because they may reflect, for example, compensation increases or other favorable treatment notwithstanding disciplinary violations or other information such as psychological unfitness for the positions they held. During the parties' July 13, 2022, meet and confer, Defendants agreed to provide a list of the categories of information contained in the files so that Plaintiffs can determine if they are relevant or if a more limited production would suffice. On July 26, 2022, Defendants informed Plaintiffs of the contents generally contained in the personnel files. The parties are continuing to discuss this issue and hope to come to an agreement.

Electronically Stored Information (“ESI”). Defendants agreed to Plaintiffs' proposed ESI protocol on July 26, 2022. Defendants have not yet produced

any ESI; they have stated that they plan to start making productions this month, on a rolling basis. The parties are also discussing amendments to Plaintiffs' search terms.

Respectfully,

/s/ David M. Stuart

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/s/ Andrew Blancato

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VIA CM/ECF